

# Informed Counsel

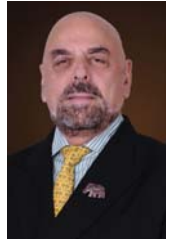
Analysis of Recent Legal Developments in Thailand and Vietnam



## contents

- 1 The WEF Comes to Bangkok  
*David Lyman reflects on his experience participating in the World Economic Forum on East Asia, which was recently held in Bangkok.*
- 3 Thailand's Proposed PPP Law  
*A draft law has been proposed to provide streamlined procedures and clearer guidelines for public-private partnerships in Thailand.*
- 4 Fixed-Term Employment Contracts  
*Employers need to be aware of a number of myths surrounding fixed-term employment contracts in Thailand.*
- 5 Employee Subleasing in Vietnam  
*Vietnam's new Labor Code includes a provision allowing for the sublease of employees—a practice that is commonly known as labor outsourcing in other jurisdictions.*
- 6 Keys to Successful Raid Actions  
*With careful planning, intellectual property right holders can carry out effective raid actions against infringers in Vietnam.*
- 7 Accession to the Madrid System  
*Proposed amendments to Thailand's Trademark Act are paving the way for the country to become a member of the Madrid Protocol by 2014.*
- 8 3-D Printing: The IP Challenge  
*The rise of 3-D printing will create both legal (patent, trademark, and copyright) and commercial issues for IPR owners.*
- 9 Combating Online Piracy  
*When faced with the sale of counterfeit products on the internet, brand owners can now pursue an enforcement option under Thailand's Computer Crimes Act.*
- 9 Lady Gaga Tweet Stirs IP Controversy  
*During her visit to Thailand, Lady Gaga made controversial remarks on Twitter, leading to renewed focus on IP enforcement efforts by the government.*
- 10 Bolar Provision Revisited  
*In the age of patent expiry, pharmaceutical originator companies are seeking to maximize their protection under Thailand's current IP laws.*
- 12 Tilleke & Gibbins Updates  
*The firm's co-managing partners have been featured in the Women in Law initiative in Asian Legal Business magazine, our Dispute Resolution group has been highly recommended by PLC, and Alan Adcock has been named a top IP strategist.*

## The World Economic Forum Comes to Bangkok



**David Lyman**  
Chairman & Chief Values Officer  
david.l@tilleke.com

For two thought-provoking days—May 31 to June 1, 2012—Bangkok played host to the 21st World Economic Forum on East Asia, a first for Thailand. The arrangements for the event, which was staged at the swank Shangri-la Hotel on the banks of the Chao Phya River, were made in early 2011 at the Annual Meeting of the World Economic Forum (WEF) in Davos, Switzerland, by former Prime Minister Abhisit Vejjajiva, whose unexplained absence from the event here was duly noted. Thai politics are not to be trifled with.

As the Forum on East Asia was widely reported on in the world's print, TV, internet, and social media, I will not rehash what they said but will give our readers my overview of the event as a participant.

The WEF is, in effect, the United Nations of the business, political, academic, and civil society worlds. In my view, if it did not exist, it would have to be invented. It is what its name describes—a forum for discussion of the ills of the world by all who have an interest in and are “committed to improving the state of the world.”

Tilleke & Gibbins has participated in WEF events dating back to 1988, when I was first invited to attend the annual meeting in Davos. In those days the WEF, headquartered in Geneva, Switzerland, had a staff of about 40 persons. Today that number now tops 500. I returned to Davos each year for the following 18 years, and to this day, I or my colleagues in the firm regularly attend WEF meetings in other locales around the world.

WEF meetings have long been world-class and attention-grabbing events. Over the past 24 years I have watched the Forum grow in stature, influence, and impact on the world stage. A WEF meeting is, and long has been, an exclusive place to see and be seen by the captains of industry, leaders in the services worlds, politicians and government luminaries of every ilk and nationality, Nobel Prize winners, notables from the entertainment and media worlds, entrepreneurs, NGOs, Young Global Leaders, and a few odd fringe people, like me, who do not fit in any category but whose presence and participation has been appreciated. This year's meeting in Bangkok was consistent with this pattern.

Under the theme of “Shaping the Region's Future through Connectivity” focusing principally on Southeast Asia, the intense two-day event was attended by over 600 registered delegates from 50 countries and 450 media representatives, plus the WEF permanent and temporary staff, government civil servants, senior and junior politicians and their staff, some spouses, assistants to attendees, hotel staff, private security and police, army and navy personnel performing a variety of functions, and service suppliers, who pushed that number way up. In terms of numbers of attendees and those involved, this was the largest East Asia Forum ever convened; not a problem for the highly efficient, capable, and organized WEF personnel.

After all these years of participation, I have many friends in the WEF and among the regular and local participants. It was heartwarming to catch up with old acquaintances. One such old friend is the Founder and Executive Chairman of the WEF, Professor Klaus Schwab. I was fortunate to be invited to attend a private ceremony during which he was conferred a doctorate *honoris causa* in Business Administration by Chulalongkorn University, Thailand's oldest and one of its most prestigious institutions of higher learning, for his outstanding contributions to Southeast Asia's business community and his long-standing commitment to its integration into the global economy.

*Continued on page 2*

The East Asia Forum program was filled with plenary sessions, interactive workshops and breakouts, tea breaks, meals, receptions, TV debates coupled with sponsors' breakfasts and cocktail events. It provided opportunities and facilities for networking among the delegates, which is one of the prime and principal benefits of attendance. Each participant is given a thick pocket-size book showing photos, business affiliations, and brief bios of all participants at the meeting. It is a great guide to learning more about the people you see and meet. In networking, you accumulate a stack of business cards of old and new friends and acquaintances and potential business connections. My collection this time was small, only slightly less than one inch thick.

Lots of talking heads (but very important, very serious, and well informed talking heads) addressed the pertinent, big-idea subthemes of: (1) Rethinking Regional Models for a New Global Context, (2) Responding to a Region@Risk, and (3) Realizing Regional Connectivity.

Reading from a prepared text, Thai Prime Minister Yingluck Shinawatra, an attractive and pleasant woman, gave the obligatory welcoming address extolling the virtues of regional connectivity among the Association of Southeast Asian Nations (ASEAN), while trumpeting the magnetism and aspirations of the Thai business environment. "Amazing Thailand" it is. She was also the esteemed featured speaker at a well-attended continental breakfast sponsored by CNBC.

The undisputed highlight of this Forum was the attendance and participation by Myanmar's iconic pro-democracy leader Daw Aung San Suu Kyi. She was on her first trip abroad from Yangon in 24 years, most of which time she has been under house arrest. Her keynote address, to the packed hotel ballroom with dozens of TV cameras rolling, was her first public appearance abroad in a quarter of a century. She was dignified, elegant, poised, polished, articulate, organized, sincere, well informed, and dedicated. An accomplished orator, she spoke without notes, from her heart, confident and honest but without rancor or bitterness. She displayed a sense of humor, which was well timed and showed her humility and humanity. She said that isolated as she was from the world's media, she kept herself informed by listening to broadcasts on her short wave radio. (It's reassuring to someone of my age to know that this ancient but enduring medium of information dissemination is still being used.) While lamenting the lost generation of her middle-aged countrymen and their inability to contribute to the growth of "Burma," as she called her nation, she focused on the future of her country and nation rebuilding. With Myanmar having only very recently opened itself to the outside world, she asked for job creation, job security, and empowerment of people encouraged by innovation, idealism, and participation by responsible foreign investment. Education and basic infrastructure are sorely lacking and need prompt attention, as does addressing the rampant corruption plaguing the country.

Ms. Suu Kyi was the darling of the media, as she would be throughout her travels to Europe, highlighted by finally receiving, in person, her Noble Peace Prize in Oslo, Norway. It was awarded to her in 1991, but she was prevented from receiving it by a then-repressive government.

Things have changed and are changing rapidly in Myanmar. It was announced that the next East Asia Forum will be held in 2013 in Myanmar. As a sign of the times, in 2014 Myanmar will chair ASEAN.

The meeting focused on the role of the ten member nations in ASEAN in the coming years both in the global economy and in working toward strong economic growth

within the region. The ASEAN Economic Community (AEC), which comes into effect in 2015, garnered much attention from the government and business leader speakers from across Southeast Asia. Will the governments and businesses be ready for the opportunities and challenges, both positive and negative, the opening of the region to (almost) free trade in goods and services, and the impact the movements of people (and selected professionals), will bring?

A topic close to my heart which was often mentioned during the conference was the importance of, and emphasis on, the practice of good personal, governmental, and business values, protection and sustainability of the remaining environment, capped with support for the Rule of Law and the last refuge of democracy—an independent, competent, and incorruptible judiciary.

The competitiveness of the various countries as reported in the WEF's *Global Competitiveness Report 2011–2012* was discussed with a comparative approach. Depending on the factors measured (i.e., efficiency enhancers and innovation and sophistication factors), Thailand fares better than most though not as good as some, placing between 39th and 51st out of the 142 countries studied. The most problematic factors for doing business in Thailand as shown in the *Report* are, in order of importance: (1) government instability/coups, (2) corruption, (3) policy instability, (4) inefficient government bureaucracy, and (5) an inadequately educated workforce.

These are familiar observations made by a number of the Thailand-based foreign chambers of commerce in their published business position papers with recommendations to the government for enhancing Thailand's competitiveness, and to avoid the perils of falling behind.

The subjects covered over this two-day Forum were wide ranging and provided many opportunities to learn about today and tomorrow in East Asia. Samples of some of the many session headings are:

- East Asian Models for Transforming the Global Economy
- The Health Advantage
- Escape From Poverty
- Bridging Populations through Culture
- Travel and Tourism
- Dealing with the Extreme
- Feeding the Multitudes
- East Asia's Growing Resilience to Risks
- Generational Legacies
- Asian Women Are the Way Forward
- The Education, Skills, and Jobs Nexus
- The Future of Energy
- Financing ASEAN's Future
- The Promise and Future of Myanmar

Asia's slow movement towards standing at the forefront of our global economy is more than apparent, and fortunately parallel to the establishment of the AEC in 2015. Recent changes, such as Myanmar's transition to democracy and the movement of capital into Southeast Asia from China, have had a profound impact on the AEC's goals of integration, economic development, and in widening investment opportunities. The role of the WEF is thus key in propagating the correct standards, knowledge, and reinforcements that can facilitate these goals.

As the host country this year for the WEF East Asia Forum, Thailand hoped to enhance its image on a global scale. Attracting foreign direct investment and foreign trade improvement are fallout benefits anticipated. We shall see.

Should you wish to absorb more about this and other WEF events, activities, initiatives, and communities, I recommend that you visit the website of the World Economic Forum on East Asia ([www.weforum.org/events/world-economic-forum-east-asia-2012](http://www.weforum.org/events/world-economic-forum-east-asia-2012)). Or visit the WEF home page ([www.weforum.org](http://www.weforum.org)). 